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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MOOG INC.,

       Plaintiff,

  v.

SKYRISE, INC., ROBERT ALIN
PILKINGTON, MISOOK KIM, and DOES NOS.
1-50,

       Defendants.

Case No.: _____

<u>DECLARATION OF JORGE LOPEZ</u>

    JORGE LOPEZ, under penalty of perjury and pursuant to 28 U.S.C. § 1746,

declares the following to be true and correct:

  I.   **<u>Background</u>**

  1.   My name is Jorge Lopez. I provide this declaration in support of Moog Inc.'s

Motion for a Temporary Restraining Order/Preliminary Injunction. I am over the age of 18 years

old. I have personal knowledge of the matters set forth herein and if called as a witness, I could

and would competently testify as to all facts set forth herein.

  2.   I received a Bachelor's Degree in Electronic Engineering Technology from

DeVry Institute of Technology in 1988. I transitioned to software engineering in approximately

1995, and supplemented my education with additional undergraduate courses in software. I have

attended seminars and trainings in DO-178B/C processes, CMMI, and other software

engineering processes.

3.   I have worked at Moog Inc. ("Moog") since 2002 when I was hired as Senior

Staff of Engineering. In 2021, I was promoted to Software Chief Engineer. At all relevant times,

I have lived in California and worked out of Moog's offices located in Torrance, California.

4.   As Software Chief Engineer, I oversee the development, certification, and training

regarding Moog's various flight control software and applications but, I still support programs

directly. From 2016 to present, the primary Moog application that I have worked on is for a

sensitive Government military program (hereafter, "Sensitive Government Program 1"). This

application sits on top of Moog's Platform operating system. Moog's Platform operating system

provides the base software for general flight control and actuation functions, and the Sensitive

Government Program 1 provides specification and details for the system for the vehicle involved

in the Sensitive Government Program 1. The particular Platform operating system developed by

Moog for military purposes is called "eRTOS." I have served as the software technical lead for

the Sensitive Government Program 1, involving in the coding, documentation, design, and

integration of the Sensitive Government Program 1.

II.   Skyryse

5.   In early November 2021, Robert Alin Pilkington, a fellow software engineer and

colleague at Moog, left Moog to join Skyryse, Inc. ("Skyryse"). Before my promotion in 2021, I

had reported to Mr. Pilkington for many years. In the last few days before he left Moog, Mr.

Pilkington told me that Skyryse presented a great opportunity for him before he retires because

of the type of work he would be doing. Mr. Pilkington told me that he would work on flight

control software at Skyryse, which is very similar to what Mr. Pilkington and his team were

working on at the time of his departure.

6.   At Moog, Mr. Pilkington was the lead software engineer on the eRTOS Platform operating system. He and his team essentially built eRTOS. In November 2021 and at the time of his departure, Mr. Pilkington and his team were working on a military software application, "Sensitive Government Program 2." One of the individuals working under Mr. Pilkington was a woman named Misook Kim. Ms. Kim had worked under Mr. Pilkington's supervision for many years. Based on my experience working with both Mr. Pilkington and Ms. Kim for several years, my perception is that Ms. Kim was extremely loyal to Mr. Pilkington and would essentially do any task that Mr. Pilkington asked of her.

7.   I worked under Mr. Pilkington for many years. We got along from a personal stand point, but, did not agree on how things were executed at work. My perception of Mr. Pilkington having worked under him for several years is that he was not a good manager. He preferred to work on the technical rather than the managerial aspects of the job. I did not agree with the way he managed because it did not grow his employees. My perception of Mr. Pilkington is that he was generally not collaborative, did not follow internal processes, and wanted to work on his own projects without obtaining input from others. My perception of Mr. Pilkington is also that he liked to surround himself with people who would do what Mr. Pilkington instructed without any pushback.

8.   On November 15, 2021, Deb Morisie (Head of People at Skyryse) called me and asked if I was interested in in having a conversation about a job at Skyryse. There were not many job details discussed during the conversation. Later that day, Ms. Morisie texted me asking to set up a further call. On November 17, 2021, I advised Ms. Morisie via text that I was going to pass on the potential job opportunity at Skyryse. A true and correct copy of my text message communications with Ms. Morisie from November 2021 is attached hereto as **Exhibit A**.

9.   Ms. Kim left Moog in December 2021 and I understand that she now works at

Skyryse.

III.   Copying of Moog's Data

10.   Based on my discussions with other employees at Moog and my review of

Moog's business and internal records, I understand that on November 19, 2021, Ms. Kim copied

a large volume of Moog data onto an external hard drive. I understand that Ms. Kim copied over

136,000 files to the external hard drive. I have reviewed certain portions of the excel file log (the

"File Log") which details each and every file name and type that was copied by Ms. Kim on

November 19, 2021, a true and correct copy of which is attached to the Declaration of Ian

Bagnald as Exhibit A.

11.   In my review of certain portions of the File Log, I saw file folders titled ███████

which were files that I had directly worked on during my last several years at Moog. I saw that a

significant volume of the files (including planning, requirements, design, coding and test files to

support certification) related to Sensitive Government Program 1 program had been copied by

Ms. Kim. I also saw that a significant volume of the files (including design, coding and test files

to support certification) related to the eRTOS Platform flight control software had been copied

by Ms. Kim. The Sensitive Government Program 1 and eRTOS programs are just a few of the

many programs that Ms. Kim copied. The types of files copied by Ms. Kim for Sensitive

Government Program 1, eRTOS, and other software programs and applications include source

code, spreadsheets, standalone documents, executables (software executable files including flight

programs), images, models (containing pictures or models of functionality), presentations, MAP

files (containing variables and addressing of flight code), object files (files created from a

compiler containing executable object code—used to link together a flight program), and SVN

Logs (files autogenerated from Moog's Subversion network).

IV.   Irreparable Harm to Moog

12.   Third party possession of the data copied by Ms. Kim, especially by a Moog

competitor such as Skyryse, presents substantial and irreparable harm to Moog. While there

were several programs and applications copied by Ms. Kim, I can speak directly to the harm

caused by the copying of significant portions of Sensitive Government Program 1 and eRTOS

since I am directly familiar with those programs. ████████████████████████████

████████████████████████████████ This software application was

developed, tested, and certified for operation through the substantial investment of training, time

and money.

13.   Similarly, eRTOS was developed, tested, and certified through several years of

thousands of hours of work by Moog employees. In the case of the eRTOS, significant Moog

money. Mr. Pilkington and his team built and were responsible for the eRTOS software. ████

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████████████████████████████████ The development of eRTOS

began in 2016 time frame. But, originally, the eRTOS began on V280 in 2013 timeframe. Just

writing the code for eRTOS took multiple years. On top of the code building, it takes several

additional years to verify, test, and certify the code under Federal Aviation Administration and

other international governing body standards. If a third party wanted to try to build a base flight

control operating system similar to eRTOS, it would take several years to build, test, and certify

that software such that it can be implemented into aircrafts.

14.   Based on my review of certain portions of the File Log, it appears that Ms. Kim

copied a significant volume of data from at least 8-9 programs. Specifically, Ms. Kim copied

many iterations and application layers of the Platform base software, as well as several additional

project-specific applications. This range of data essentially amounts to a significant amount of

expertise that Moog's flight control software team has built over the past 15 years. It is

impossible to quantify the amount of monetary investment, software engineering hours, and

other resources that have gone into developing, testing, and certifying some of these programs

and applications.

15.   At the time of their departure from Moog in November and December 2021, Mr.

Pilkington and Ms. Kim were working on a separate military application called Sensitive

Government Program 2. They were not working on Sensitive Government Program 1 or other

programs. Thus, based on my review of Moog's internal and business records, including the File

Log, I conclude that there is no legitimate business purpose for Ms. Kim to download and copy

the Sensitive Government Program 1 and eRTOS programs, as well as any of the other programs

and applications copied by Ms. Kim outside of Sensitive Government Program 2.

16.   I understanding that at least 20 Moog employees have been hired by Skyryse.

This includes all the software engineers involved in the eRTOS project, and several software

engineers from Sensitive Government Program 2 and other military projects. We are not able to

immediately replace these employees because it takes a long time to obtain necessary credentials

to work on military programs. Further, because Mr. Pilkington and his team were the only people

with institutional knowledge of the eRTOS system, any person who has to interface or work with

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that program must learn the program from scratch. This requires substantially more time and impacts our ability to meet client demands and finalize deliverables under certain contracts.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States of America.

Dated: March 4, 2022

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Jorge Lopez